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May 6, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of Western Wireless Corp. ("Western Wireless"), an *ex parte* presentation was made today to Christopher Libertelli, legal advisor to Chairman Michael Powell, regarding the "definition of universal service" proceeding. Participants on behalf of Western Wireless included Mark Rubin, Director of Federal Government Affairs of Western Wireless Corp., and the undersigned. We distributed a copy of the attached and other documents previously filed in this proceeding.

If you have any questions, please contact me.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for Western Wireless Corp.

cc: Christopher Libertelli

Equal Access and the Definition of Universal Service

- The Act does not authorize the Commission to impose equal access requirements on wireless carriers.
  - Equal access does not meet the requirements of Section 254(c)(1), because it is not a "service" that consumers have "opted" to purchase through "free market" decisions. Interexchange service is the "service" customers purchase -- equal access is a legal mandate that courts and regulators imposed on ILECs to open the long distance market to competition.
  - Imposing equal access requirements on wireless carriers is contrary to the explicit mandate of Congress found in Section 332(c)(8). Section 332(c)(8) and Section 254 were both added to the Communications Act in 1996. The Commission cannot do indirectly – impose equal access on wireless carriers through the definition of universal service – that which the statute prohibits it from doing directly.
- Requiring all ETCs to provide "equal access" would be harmful to consumers.
  - Not a single interexchange carrier supports the imposition of equal access on wireless carriers; and the FL and NY commissions, as well as USTA and several ILECs, oppose it.
  - As the Commission has found, consumers benefit from the national "one rate" plans provided by wireless carriers. Imposition of an equal access requirement either would deny customers these benefits and force them to pay a separate charge for their interexchange service, or be a sham, as no wireless customer would elect to pay a separate charge for interexchange service in addition to the "one rate" wireless carriers offer on a national basis
  - In a competitive environment, regulators should not limit how broadly carriers compete and force all consumers into identical service packages, which is what an equal access requirement would do. As local and long-distance markets converge, it makes no sense to extend the equal access concept to competitive wireless entrants.
  - As USTA recognizes, the Commission would better advance the interests of consumers by reducing the regulatory obligations of ILECs, rather than increasing the regulation of wireless carriers.
- Requiring Wireless Carriers to provide equal access would require further Commission rule makings.
  - Equal access would be costly to implement. In addition to the direct cost of installing equal access software in wireless switches and the balloting and implementation of customer "PICS", rules for recovering the costs of obtaining tandem and direct interconnection for interexchange traffic would have to be created to establish wireless carriers' rights to recover these costs from wireline and interexchange carriers (through access charges), and from their customers. Consumers would be saddled with these increased costs.

- In an equal access environment, the Commission would have to expand its access charge regime to wireless carriers just as it is attempting to phase out this mechanism.

- An equal access requirement would necessitate an FCC determination of which wireless calls are "local" and which calls are "long distance for equal access purposes. Local exchange carriers use "LATAs" while the Commission has established "MTA's" for defining wireless "local: calling areas (*see* 1996 *Local Competition Order*). MTA's are too large for capturing interexchange traffic subject to competition, while almost 20 years ago, in the very first MFJ waivers, the Decree Court recognized that LATA's are too small to properly define wireless service markets.

- Adding equal access to the definition of universal service would violate the principle of competitive neutrality.

  - Universal service policy should be "competitively neutral" – neither impeding competition nor artificially promoting it. Yet the rural ILECs are pushing for equal access precisely in order to reduce or eliminate wireless carriers' ability to compete in the universal service marketplace

  - "Regulatory parity" is neither necessary to achieve competitive neutrality, nor is it appropriate. Is the Commission prepared to require all rural ILECs to add a mobility component to their offering?